

Message

From: Vickery, Bryce [Vickery.Bryce@epa.gov]
Sent: 9/26/2019 8:49:22 PM
To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Clips Thursday 26th

Water

[EPA to California: You're also 'failing' to meet water pollution standards](#)

[EPA: California homelessness causing poor water quality](#)

Air

[Democrats float resolution backing California auto GHG rules](#)

[The EPA disbanded this panel of clean-air experts – they're meeting again anyway](#)

[Settlement Reached To Reduce GHGs From California Warehouse Complex](#)

[CARB Says It May Enforce Auto GHG Rules After Waiver Suit](#)

[California Bill Restricting ZEV Rebates Latest Front In War Over GHG Ruleslatest-front-war-over-ghg-rules](#)

EPA

[EPA set to hike e-Manifest fees as industry slow to adopt system](#)

[EPA Contractors Get Review on Timeliness of Gold King Spill Suit](#)

Animal

[Trump's E.P.A. Chooses Rodents Over PeopleTrump's E.P.A. Chooses Rodents Over People](#)

EPA to California: You're also 'failing' to meet water pollution standards

<https://www.latimes.com/politics/story/2019-09-26/epa-trump-california-water-pollution-homelessness>



President Trump at Marine Corps Air Station Miramar during a recent trip to California.

(Howard Lipin/The San Diego Union-Tribune)

By ALEXA DÍAZ,

ANNA M. PHILLIPS

SEP. 26, 2019

8:09 AM

WASHINGTON —

The Trump administration notified California officials on Thursday that it is “failing” to meet federal water-quality standards, attributing this in part to homelessness.

An oversight letter addressed to Gov. Gavin Newsom alleges that San Francisco, Los Angeles and the state “do not appear to be acting with urgency to mitigate the risks to human health and the environment that may result from the homelessness crisis.”

EPA Administrator Andrew Wheeler warned that the agency is “concerned” about the state’s handling of public water systems.

“The agency is aware of the growing homelessness crisis developing in major California cities, including Los Angeles and San Francisco, and the impact of this crisis on the environment,” Wheeler wrote. “Based upon data and reports, the agency is concerned that California’s implementation of federal environmental laws is failing to meet its obligations required under delegated federal programs.”

The letter, which gives Newsom 30 days to respond, marks the latest escalation in the Trump administration’s political feud with California, particularly when it comes to the environment and homelessness.

In a Thursday call with reporters, a senior EPA official who spoke on condition of anonymity dismissed questions about the timing of the agency’s letter. Wheeler’s concern about California’s compliance with the Clean Water Act and other federal environmental laws arose out of routine monitoring, the official insisted.

Yet the issues raised in the administrator's letter have been on California officials' radar for years. Officials from California's Environmental Protection Agency did not immediately respond to a request for comment Thursday.

The warning comes days after the Environmental Protection Agency threatened to cut federal transportation funding from California as punishment for not submitting timely air pollution-control plans, an announcement that came amid a legal fight between state and federal powers over whether California can set tougher car emissions standards than those required by the federal government. It also follows a threat from President Trump to punish San Francisco with some type of violation notice for what he described as environmental pollution during a recent trip to the state.

During the trip, Trump ramped up his attacks on California over its homeless crisis, threatening San Francisco with a violation notice for the "tremendous pollution" he said was flowing into the ocean because of waste in storm sewers, specifically citing used needles.

"It's a terrible situation — that's in Los Angeles and in San Francisco," Trump said. "And we're going to be giving San Francisco — they're in total violation — we're going to be giving them a notice very soon."

It was unclear at the time what Trump was referring to, and there was not a clarification about what rules San Francisco violated.

In Thursday's letter, Wheeler said the "piles of human feces" on streets in Los Angeles and San Francisco are "becoming all too common."

"The EPA is concerned about the potential water quality impacts from pathogens and other contaminants from untreated human waste entering nearby waters," the letter reads.

The letter specifically calls out "troubling" storm water management and water treatment efforts in San Francisco and named concerns with 202 public health systems in California "that put the drinking water of nearly 800,000 residents at risk."

Although the EPA does not warn in the letter of specific sanctions, Wheeler wrote that he has directed EPA staff to consider all possible options to bring the city into compliance.

Before Thursday's letter, Trump's EPA had shown little interest in improving California's water quality. Earlier this month, the agency announced that it was rolling back Obama-era protections on wetlands and streams — regulations that environmentalists said are necessary to protect drinking water but that farmers and developers have long opposed.

Under Trump, the EPA has also delayed setting a drinking water safety standard for a class of cancer-causing chemicals, known as PFAS, that has been found in public water systems throughout the country.

EPA: California homelessness causing poor water quality

https://www.washingtonpost.com/national/energy-environment/epa-california-homelessness-causing-poor-water-quality/2019/09/26/1dc37382-e06c-11e9-be7f-4cc85017c36f_story.html

By John Flesher | AP

September 26 at 10:46 AM

The U.S. Environmental Protection Agency says California is falling short on preventing water pollution, largely because of its problem with homelessness in big cities such as Los Angeles and San Francisco.

EPA Administrator Andrew Wheeler outlined the complaints Thursday in a letter to California Gov. Gavin Newsom. Wheeler is demanding a detailed plan for fixing the problems within 30 days.

The letter says “piles of human feces on sidewalks and streets” could cause water contamination. It criticizes San Francisco for routinely discharging inadequately treated sewage into the Pacific Ocean.

Wheeler says if the state doesn’t meet its responsibilities, EPA will have to take action.

The letter escalates a feud between the Trump administration and California, a predominantly Democratic state that has fought the administration’s efforts to weaken environmental regulations.

Democrats float resolution backing California auto GHG rules

<https://insideepa.com/daily-feed/democrats-float-resolution-backing-california-auto-ghg-rules>

September 26, 2019

Dozens of Democratic lawmakers in both the House and Senate are sponsoring companion resolutions supporting California’s authority to regulate auto greenhouse gas emissions, rebuking the Trump administration’s final rule preempting the state’s GHG and zero-emission vehicle (ZEV) standards.

The Senate version of the resolution, [S.Res. 316](#), was introduced Sept. 18 by Sen. Kamala Harris (D-CA) and 33 other Democrats. The House version, [H.Con.Res. 65](#), was floated a day later by Rep. Mark DeSaulnier (D-CA), and it has 85 additional Democratic cosponsors.

Backers include both of the Golden State’s senators and all but four of the 46 Democrats in the state’s House delegation.

The resolutions do not specifically mention the Trump administration’s planned rollback of Obama-era vehicle GHG and fuel economy standards, or its [just-finalized rule](#) preempting California’s authority.

Instead, they offer general support for the Obama-era requirements, California’s authority under the Clean Air Act to set its own vehicle standards, and other states’ power to subsequently adopt those limits.

If enacted, the measure would put Congress on record as supporting “the existing set of regulations, known as the ‘One National Program,’” that the Obama administration crafted in 2012 alongside California.

EPA and the Transportation Department (DOT) have been developing a joint rule to aggressively scale back those standards, and a final version could be released in the coming weeks.

Additionally, the Democratic resolution says the current rules “recognize the rights and importance of States under cooperative federalism to choose to set and follow vehicle emissions standards under the Clean Air Act that are stronger than those set by the Federal Government.”

It continues that the Obama-era rules require the White House, EPA and DOT to “solicit input from State parties impacted by any changes to the existing GHG emissions standards for light-duty vehicles and the associated standards for corporate average fuel economy,” an implicit reference to complaints from Democratic states that they were not consulted on the Trump rollback plan.

The EPA disbanded this panel of clean-air experts – they're meeting again anyway

by Matt Shipman, [North Carolina State University](#)

<https://phys.org/news/2019-09-epa-disbanded-panel-clean-air-experts.html>



Credit: Ian Britton/Creative Commons

In 2015, a panel of experts was convened to help advise the U.S. Environmental Protection Agency about the best available science related to clean-air standards for particulate matter. In 2018, the EPA disbanded the group, raising questions about how and whether the agency would incorporate scientific expertise into its clean-air policy.

However, the disbanded group of experts re-convened independently in order to provide their scientific expertise on these clean-air topics in a public forum. The group will be meeting Oct. 10-11, and will be chaired by Chris Frey, the Glenn E. Futrell Distinguished University Professor of Civil, Construction, and Environmental Engineering at NC State.

We recently had the opportunity to talk with Frey about the upcoming meeting, what led up to it, and what he and his colleagues hope to accomplish.

The Abstract: In October, you'll be chairing a meeting of the Independent Particulate Matter Review Panel (IPMRP). My first question should really be, "What is the IPMRP?" But I feel like we need to explain a couple other things before we can get to that part. So, let's start with: What is the Clean Air Scientific Advisory Committee (CASAC), and what is its role?

Chris Frey: Under the Clean Air Act, the U.S. Environmental Protection Agency must periodically and accurately review the latest scientific knowledge regarding adverse effects on human health and public welfare from pollutants that are regulated under the National Ambient Air Quality Standards program, or NAAQS.

The Clean Air Act also requires that the EPA Administrator be advised by an independent scientific committee, the Clean Air Scientific Advisory Committee (CASAC), which is legally required to have seven members. CASAC is required to review the available science and advise the EPA administrator regarding whether to revise existing standards or create new standards.

CASAC is also required under the Clean Air Act to advise the Administrator on research needs and the portion of ambient air pollution that is from background natural sources. In setting NAAQS, EPA must protect public health with an adequate margin of safety. The U.S. Supreme Court has ruled that EPA is prohibited by law from considering cost or feasibility of compliance when setting standards. Thus, NAAQS are unlike many other air pollution standards in that they are explicitly and solely based on protection of public health and public welfare, and they are explicitly to be based on a thorough scientific assessment.

There are currently more than 120 million people in the U.S. who live in areas that fail to attain the current health-based standard for ground level ozone, and over 20 million living in areas that fail to attain the current health-based standard for fine particulate matter. So this is a serious issue that affects the lives of millions of Americans.

CASAC's opinion is important because federal courts have generally found that EPA must follow CASAC's scientific advice in setting or revising air quality standards—unless the agency has a compelling rationale for not doing so.

I was a member of CASAC from 2008 to 2012, and I chaired CASAC from 2012 to 2015. From 2007 to 2018, I participated in CASAC review panels for all of the pollutants regulated under the NAAQS, including ozone, particulate matter, nitrogen dioxide, sulfur oxides, carbon monoxide, and lead. I chaired reviews for ozone, nitrogen dioxide and lead.

TA: What is particulate matter, and what was the job of the CASAC Particulate Matter Review Panel?

Frey: Particulate matter includes small liquid droplets and tiny solid particles. Some of these are emitted from sources such as cars and power plants, while others form in the air, such as from condensation of organic compound vapor. Particulate matter is divided into size ranges, and the size range most associated with adverse human health effects is "fine" particulate matter, also known as PM_{2.5}. PM_{2.5} refers to particulate matter that is less than 2.5 micrometers in diameter. By comparison, a human hair is typically 50 to 70 micrometers in diameter. PM_{2.5} particles can get past the body's natural defenses, such as nose hairs, and penetrate deep into the lungs, where they can cross into the bloodstream. In prior scientific reviews, PM_{2.5} has been found to cause respiratory and cardiovascular illness, and contribute to premature death. Globally, PM_{2.5} is implicated in the deaths of millions of people each year.

The CASAC Particulate Matter Review Panel was formed in 2015 to assist the CASAC with the current review of the NAAQS for particulate matter. For more than four decades, it has been well-recognized that the extent of scientific knowledge needed to review air quality exceeds the capabilities of any seven people. This is because many scientific disciplines and areas of expertise are required. Examples include air quality measurement and modeling; human exposure to air pollution; epidemiology; toxicology; medical clinical studies of human

subjects; statistics; risk assessment; visibility effects; and others. Furthermore, for key disciplines, it is important to have multiple experts who have a diversity of experience and perspectives. Thus, for each review cycle for a given pollutant, CASAC has been augmented with review panels. The CASAC PM Review Panel had 20 experts in addition to the seven members of CASAC.

TA: The CASAC PM Review Committee was disbanded in 2018, shortly before EPA proposed updates to its integrated science assessment for particulate matter. What is an integrated science assessment, and what role would the CASAC PM Review Committee have had in reviewing the proposed changes to that assessment?

Frey: The CASAC PM Review Panel was formed in November 2015. Our panel first met in 2016 to review EPA's plan for conducting the scientific assessment. We learned that the panel was disbanded in a press release from then-acting EPA Administrator Andrew Wheeler, on Oct. 10, 2018. None of us on the panel were given any advance notice or warning that this would happen. At the time, no reason was given. Later, Administrator Wheeler claimed that the panel was disbanded to speed up the scientific review. However, in my 12 years of experience on 10 different review panels, I have not observed any delays due to the existence of a panel. Rather, the panels are essential to engage the needed experts, without which CASAC cannot effectively discharge its duties under the Clean Air Act.

Five days later, EPA released a 1,881-page draft Integrated Science Assessment (ISA) for particulate matter. The ISA is essentially a large literature review of all of the scientific information relevant to review of particulate matter. Additionally, the ISA includes analysis by EPA staff regarding questions such as what adverse health effects are caused by exposure to particulate matter, what groups of people are most at-risk from such exposures, and what are the other adverse effects of particulate matter such as reduced visibility or damage to materials.

The CASAC PM Review Panel would have provided a thorough expert review of the draft ISA. Instead, the review was done in December 2018 by only the seven members of CASAC. In April 2019, the CASAC issued its review report, advised Administrator Wheeler that no seven people are sufficient for the complexity of the review, and asked that EPA reappoint the disbanded panel or form a similar panel. In July 2019, the Administrator declined CASAC's request. Instead, the Administrator made an unprecedented decision to form a "pool" of consultants who may respond to written questions from CASAC members. On Sept. 13, without any prior opportunity for public comment on nominees, Administrator Wheeler announced appointments of 12 consultants. However, this pool of consultants does not have the same breadth, depth and diversity of expertise as the disbanded panel.

TA: Okay, with all of that background established—what is the IPMRP, and why was it established?

Frey: I'm proud to say that being disbanded is not an obstacle for our panel. If anything, being told that we were unilaterally terminated has redoubled my determination to discharge the public service to which I originally agreed. Furthermore, as I and others have stated in public comments, Administrators Pruitt and Wheeler made changes to the scientific review process for the NAAQS that have undermined the quality and credibility of the process. Thus, I and others feel we should do what we can to provide EPA staff and leadership with access to the best scientific expertise, in the interests of provide a strong scientific foundation for decision making about the particulate matter standards.

Within a month of being disbanded, we formed the Independent Particulate Matter Review Panel, or IPMRP, serving as independent science advisors recognized for our national leadership in policy-relevant science pertaining to the particulate matter NAAQS.

The mission of this panel is three-fold: (1) to provide independent advice regarding technical and policy assessments pertaining to the EPA's review of the PM NAAQS; (2) objectively observe and assess

modifications to the NAAQS Review Process and their implications; and (3) educate the public about the public health and public welfare objectives of the NAAQS, the NAAQS review process, and scientific issues pertaining to the NAAQS. Given the process under which this group was originally formed as the CASAC PM Review Panel, we are recognized for our expertise and our independence.

Our panel has already been active. On Dec. 10, 2018, we submitted our comments and advice regarding EPA's draft Integrated Science Assessment to the CASAC, followed by additional comments submitted on March 27, 2019. Broadly speaking, we found that the draft ISA appropriately identified and characterized the key health effects from exposure to particulate matter.

We are now gearing up to review a newly released 450-page EPA document, the draft Policy Assessment. The Policy Assessment is the last major step in the science-based review process, in which EPA staff take scientific information from the ISA and use it to answer policy-relevant questions such as: Is the current standard adequate to protect public health and welfare? If not, what alternative standards should be considered by the administrator? The Policy Assessment is intended to serve as a foundation for the administrator to decide whether to retain or revise the current standards.

TA: What is your role regarding the IPMRP? Were you on the CASAC Particulate Matter Review Committee?

Frey: I was a member of the CASAC PM Review Panel that was formed in 2015. After we were disbanded, I volunteered to help members of the panel create a consensus statement of written comments in December 2018 and March 2019. I have kept the panel informed of various developments that affect how the NAAQS review is being done now compared to prior reviews. This work is not possible without the active support of many people. Our panel includes several members who have also served on the chartered CASAC. Thus, we have a lot of combined experience regarding how to organize and manage this type of review activity. I am currently serving as chair of the panel.

TA: Why is the IPMRP meeting on Oct. 10 and 11?

Frey: This can be a long story but I'll try to give the short version. We have known for months that EPA would release a draft Policy Assessment sometime in the early fall. However, we did not know the exact date. We agreed that we would convene to review the Policy Assessment, which is what we would have eventually done anyway had we not been disbanded. When the Policy Assessment was released in early September, we scrambled to poll members to find dates that would work for as many people as possible.

We also wanted to hold our meeting before the CASAC will meet on the same Policy Assessment, so that we can formulate advice and provide it to the CASAC in advance of its deliberations. However, we did not know when CASAC would meet. Thus, we had to make a guess at a good meeting date. After we picked the date, we realized that our meeting will coincidentally start on the one-year anniversary of our disbanding.

We are fortunate to have help from the Union of Concerned Scientists, which is providing travel support so that panel members can convene face-to-face in Crystal City, Virginia, near Washington, DC. We are meeting at the same location as the most recent in-person CASAC meeting. This will enable us to have the depth of interactive deliberation needed for this complex subject matter. UCS does not take policy positions on NAAQS criteria and standards, other than to advocate that independent science advice is followed. The content of the meeting is at the sole discretion of the IPMRP. The viewpoints and opinions of members of the IPMRP, and of the consensus of the IPMRP, are their own and do not represent any position of UCS.

TA: What are you hoping will come out of the meeting?

Frey: We will do what EPA tried to prevent us from doing: advise CASAC, EPA staff, the EPA administrator, and the public regarding our scientific advice pertaining to key science and policy issues. We will consider whether the current standards are adequate to protect public health given new scientific evidence available since the last time the standards were revised in 2012. If the panel finds that a standard is not adequate to protect public health, then the panel will recommend possible alternative standards based on the best available science. We will also provide advice regarding research needs and background concentrations. We may also have new findings regarding the effect of numerous changes to the NAAQS review process that have occurred in the last two years.

We will place our written report into the docket for this review cycle, which obligates EPA to look at our findings and advice. We would like for our findings and advice to be considered by EPA staff as they revise the draft Integrated Science Assessment and draft Policy Assessment into final documents, and by the administrator in making a decision regarding whether to retain or revise the existing standards.

Settlement Reached To Reduce GHGs From California Warehouse Complex

<https://insideepa.com/daily-news/settlement-reached-reduce-ghgs-california-warehouse-complex>

September 26, 2019

Environmentalists have reached a legal settlement with a southern California development company to reduce greenhouse gases and other air pollutants from a planned large complex of industrial warehouses, underscoring the ever-growing use of GHG and climate policies under the California Environmental Quality Act (CEQA) to alter major development projects.

“The rapid growth of the logistics industry in Riverside and San Bernardino Counties has contributed to an increase in bad air quality days beginning in 2013,” said Kim Floyd, a Sierra Club representative, in a Sept. 16 press release. “Developers can help stop this increase by incorporating mitigations such as those agreed on in this settlement.”

The settlement agreement, dated Aug. 22, resolves a lawsuit filed against the city of Fontana in April in San Bernardino County Superior Court by the Sierra Club, Center for Community Action and Environmental Justice, and Center for Biological Diversity.

The environmentalists charged that the city failed under CEQA to adequately assess and mitigate GHGs and climate impacts when earlier this year it approved the West Valley Logistics Center project, which consists of seven warehouses totaling 3.4 million square feet. The warehouses would be built on open space adjacent to a residential neighborhood and would add more than 6,000 vehicle trips per day, including 2,000 diesel trucks, the environmentalists argued.

In addition to the GHG and climate damage claims, the plaintiffs charged the project’s environmental impact report (EIR) failed to adequately analyze and mitigate other environmental and public health effects, including impacts to air quality, traffic, special status wildlife and wildlife movement.

Further, the project would “bulldoze critical habitat for the coastal California gnatcatcher -- an imperiled bird -- and destroy a wildlife corridor that allows animals to move between the Jurupa Hills and Rattlesnake Mountain,” the groups alleged.

The legal settlement, reached with the development company UST-CB Partners, mandates new measures aimed at reducing GHGs and other air pollution from the warehouse and protecting living space for gnatcatchers. In addition, the complex must implement energy- and water-efficiency measures, according to the release.

Some of the GHG and pollution mitigation measures include: the operator must prevent trucks from queuing outside the complex; electrical outlets at loading docks must be capable of serving Alternative Power Units to allow truck cabs

to say cool without using their engines; all buildings must be designed to provide infrastructure to support use of electric

powered forklifts and/or other interior vehicles; and all outdoor cargo-handling equipment -- including yard trucks, holsters, yard goats, pallet jacks and forklifts -- as well as all on-site indoor forklifts must be powered by electricity.

All contractors and building operators must use on-road heavy-duty diesel trucks with a 2010 model year engine or newer equipped with a particulate matter trap; and all non-road construction equipment greater than 50 horsepower must meet EPA Tier 4 emission standards with some exceptions, the pact says.

Further, truck idling and idling of Auxiliary Power Units cannot exceed five minutes, and for certain buildings idling is limited to three minutes.

Agreement Provisions

Other requirements include that the operator must install and maintain for at least 15 years photovoltaic (PV) solar systems on at least half the complex’s total rooftop area; bicycle racks and/or lockers must be provided throughout the project, including near all building entrances; and maintenance/landscaping crews cannot use any non-electric equipment unless such equipment is not readily available within San Bernardino County.

Further, the operator must consider future installation of infrastructure necessary to support trucks that run at least partially on electricity, if such technology becomes available and is in common use at industrial warehouses, the agreement says.

The operator must also establish a “Transportation Management Association” (TMA) or similar mechanism to create a carpooling program, including traditional carpooling as well as web-based “car sharing/ride sharing” and “reserve car” sharing vehicles.

Another important provision in the agreement states that, prior to issuance of the first building permit for the project, in the event that the truck route will permit 50 percent or more truck trips from the project to certain

area streets, the operator must pay \$100,000 to Center for Community Action and Environmental Justice. The money must be used to fund air filtration devices in the Bloomington community.

However, UST-CB Partners “vigorously disputes air filtration devices are necessary or that the project has significant health impacts,” the agreement adds.

The lawsuit against the city of Fontana marked the latest of many recent challenges that cite expanding GHG- and climate change-related policies and CEQA guidelines being adopted by the state. For example, a coalition of environmental groups successfully sued San Diego County over its climate change action plan for allowing developers to purchase GHG offset credits to meet CEQA mitigation requirements.

City of Fontana officials concluded that the warehouse project will emit 60,000 metric tons of carbon dioxide-equivalent annually, which the environmentalists alleged would result in a significant impact on climate change.

The city also acknowledged the project will conflict with applicable regulatory plans, policies and regulations intended to reduce GHGs, the environmentalists contended. In particular, the city concluded the project conflicts with CARB’s 2017 GHG regulatory scoping plan, which sets an emissions target of 40 percent below 1990 levels by 2030.

[Related News](#) | [California](#) | [Suppress from Daily News](#) | [Suppress from E-mail](#) |

California Bill Restricting ZEV Rebates Latest Front In War Over GHG Rules

<https://insidepa.com/daily-news/california-bill-restricting-zev-rebates-latest-front-war-over-ghg-rules>

September 26, 2019

A California lawmaker is floating legislation to restrict rebates for the purchase of zero-emission vehicles (ZEVs) only to customers of auto companies that have agreed to the state’s voluntary “framework” for greenhouse gas emission standards that are much stricter than the Trump administration’s planned rollback of federal limits.

“California should not incentivize the purchase of vehicles manufactured by companies that are not helping to achieve the state’s public health and climate goals by refusing to join the state’s framework,” states the bill, [AB 40](#) by Assemblyman Philip Ting (D-San Francisco).

“You’re either with us, or you’re not helping to save people’s lives and the planet,” Ting adds in a Sept. 19 press release.

The legislation was introduced Sept. 10, but it cannot be considered by state lawmakers until next year, as this year’s legislative session ended Sept. 13.

AB 40 notes that Gov. Gavin Newsom (D) and the California Air Resources Board (CARB) announced in July an agreement with four auto companies -- Ford, Honda, BMW and Volkswagen -- on a framework for meeting far stricter GHG standards for model year 2022-26 vehicles than the Trump administration's proposal to freeze federal limits at MY20 levels.

"The framework is a pragmatic approach that provides automakers additional flexibility to meet the current vehicular emissions standards while supporting an accelerated transition to" ZEVs, AB 40 states.

Ting introduced the bill late in this year's session to help spur discussions with other lawmakers, legislative staff and stakeholders during the fall and winter for possible amendments to the measure early next year, according to a Ting staffer. In addition, the introduction of the bill may provide an additional incentive for other automakers to join CARB's framework agreement in the interim, the source says.

While CARB provided Ting's staff with "technical assistance" in drafting AB 40, the board has not indicated if it will support the measure, the staffer says. "We hope they come on board, because it is in line with their goals," the source says.

CARB did not respond to a request for comment by press time.

Regardless of the bill's prospects for enactment, the measure nonetheless represents another front in the confrontation between the Trump administration and California that continues to escalate.

EPA officials Sept. 24 threatened to withhold federal highway funding for California over a "backlog" of dozens of implementation plans for national air quality standards -- a move that EPA officials claim has nothing to do with their tense confrontation over vehicle GHG rules, even though critics say the agency's threat smacks of retaliation over California's voluntary GHG deal with industry.

The Trump administration last week formally revoked California's Clean Air Act authority to set its own auto GHG and ZEV standards -- even as its broader rollback of federal rules remains weeks from completion. California and 22 other states quickly sued over the preemption rule in federal district court.

'Counter-Productive' Bill

A spokeswoman with the Alliance of Automobile Manufacturers criticizes AB 40 and its potential effects.

"This legislation would limit consumer access to the highly energy-efficient vehicles that the state has said it expects manufacturers to make and needs consumers to buy, so this proposal seems to be counter-productive and contrary to proposals that regulators have outlined," she says.

California's Clean Vehicle Rebate Project (CVRP) program gives a consumer \$5,000 for the purchase of a hydrogen fuel-cell electric vehicle (EV), \$2,500 for a battery EV, and \$1,500 for a plug-in hybrid EV. Eligible low-income drivers receive an additional \$2,000 for each type of vehicle.

In addition to restricting the rebates to certain automakers, AB 40 would also alter CVRP program requirements by removing plug-in hybrids from eligibility, and creating a higher rebate for vehicles with zero emissions and a greater driving range.

The bill also would codify state targets of placing at least 5 million ZEVs on state roads by 2030 and 10 million ZEVs by 2035.

Newsom last week issued [an executive order](#) that directs CARB to help accelerate progress toward the state's ZEV targets by developing new criteria for the CVRP program to "encourage manufacturers to produce clean, affordable cars"; proposing new strategies to increase demand in the primary and secondary markets for ZEVs; and considering strengthening existing or adopting new regulations to achieve the necessary GHG reductions from within the transportation sector. -- *Curt Barry* (cbarry@iwpnews.com)

Related News | [Air](#) | [California](#) | [Climate Policy Watch](#) | [NEWSLETTERS](#) |

221528

EPA set to hike e-Manifest fees as industry slow to adopt system

<https://www.wastedive.com/news/epa-emanifest-fee-increase-slow-adoption/563611/>

The scale of fee increases scheduled for October caught hazardous waste generators and service providers — already frustrated with navigating the new system — by surprise.



Credit: Cpl. Emmanuel Necoechea - U.S. Marine Corps

Author

By

[Cole Rosengren](#) [@ColeRosengren](#)

Published

Sept. 25, 2019

The EPA's e-Manifest system, intended to digitize the tracking of hazardous waste shipments, has struggled to gain traction in its first year. Now, user fees are set to spike next month and service providers are raising concerns about the initiative's progress.

While the industry still supports moving toward fully electronic submissions by June 30, 2021, and backed the law that created this system in 2012, some of its largest users and their trade association are increasingly frustrated with how the e-Manifest system has developed.

"EPA has spent \$17 million of our money from user fees and we still don't have a functional e-Manifest system," David Case, executive director of the Environmental Technology Council (ETC), told Waste Dive.

The new fees were announced in late July, later than anticipated, and are set to take effect on October 1. They will run through September 2021. New costs will range from \$8 per electronic manifest (previously \$5) to \$25 per mailed in paper copy (previously \$15). The cost for "image + data" entries, which currently represent 75% of all submissions, will rise from \$6.50 to \$14.

These new rates are meant to incentivize a full move to electronic submissions by June 30, 2021. The rate increases are also designed to cover a significant overestimation in how many generators would use the system since it launched last June.

Adoption strains

The EPA initially estimated it would see nearly 3 million manifests submitted during fiscal 2019, but now anticipates receiving only 2.12 million. Out of that 2.12 million, the agency projects only 10,000 will be fully electronic. The EPA recognizes there have been challenges with slow adoption, but disagreed with ETC's characterization that the system wasn't viable.

"EPA considers its system to be functional with respect to fully electronic manifests," a spokesperson wrote via email. "EPA acknowledges that electronic manifests represent a small subset of the manifest universe and thus is seeking ways to assist industry with faster adoption of electronic manifests."

One of the biggest gaps appears to be in expectations about how many state-specific manifests would get sent. Waste deemed hazardous under state law, but not federal law, is covered by the program unless states opt out. Illinois is the first to stop requiring state-regulated hazardous waste to be covered by the federal form, but it's likely not the last. The EPA now projects a 17% reduction in manifests covering state-regulated waste as more follow suit.

The agency maintains any potential shift in how states choose to track or regulate hazardous wastes not defined by the Resource Conservation and Recovery Act can be handled accordingly.

"EPA's interest related to e-Manifest is only in ensuring that state wastes requiring a manifest are ultimately submitted to the system as required under the e-Manifest Act," the spokesperson told Waste Dive. "If and when changes to state programs occur that impact national manifest volumes, EPA will take those changes into account when it sets user fees, which it does every two years."

This impending change, along with other cost factors such as a government contract for paper processing, have all put pressure on a system that still isn't fully integrated with the operations of many hazardous waste companies.

The initial goal was for e-Manifest to work directly with internal company software that handles functions such as billing, transport and handling. Instead, e-Manifest remains a largely parallel operation that can now only verify the location of material once it reaches the final treatment, storage and disposal facility.

"We and other industry representatives are very challenged in getting to the fully electronic version, because that would take technology that interacts and engages with the EPA's system," Wade Scheel, Stericycle's director governmental affairs, told Waste Dive.

Scheel and others believe EPA prioritized building a manifest system to suit its goals around data collection and analysis more so than practical applications in the field. Logistical factors around managing paperwork, software and permissions across multiple points of contact remain a concern for multiple companies.

"They spent a tremendous amount of resources building this system, instead of working with industry," he said. "Instead of finding a way to get our system to interact with that database, where all of the data lives, they built their own system that we are not going to use because that would take us doing double the work."

The EPA said it's continuing to work on this issue, but countered that "nearly 80%" of all manifest data currently being submitted "comes directly from integrated system-to-system data exchanges."

Still, given the various questions presented by e-Manifest, ETC ranks the program among the more pressing regulatory aspects for its members.

"Today this is the most dysfunctional aspect of the national hazardous waste program," said Case.

Next steps

The new fees set to take effect next week could have been higher in some categories, per EPA's calculations, but the final range is still viewed as enough of a challenge by multiple companies.

For example, Stericycle previously built in administrative costs beyond the original rates but doesn't anticipate that will be possible in all cases for the new ones. Even if companies felt their customers would accept such an increase, they might be constrained by language in long-term contracts. Retail customers are expected to be among the most affected, given the large number of locations and regulatory restrictions on shipping certain hazardous items back in bulk via reverse logistics.

As all of this unfolds, hazardous waste service providers and generators are still working to pull off a full switch to electronic submissions in less than two years.

Stericycle and other companies say they're working on new technology to make it happen, and remain committed to the goal of reducing paperwork, but the timing could be optimistic. Technically, the June 2021 implementation date is an EPA deadline and not one mandated in the original law.

EPA Contractors Get Review on Timeliness of Gold King Spill Suit

<https://news.bloomberglaw.com/product-liability-and-toxics-law/epa-contractors-get-review-on-timeliness-of-gold-king-spill-suit>

By [Peter Hayes](#)

Sept. 26, 2019, 10:01 AM

- Contractors say claims untimely under Colorado law
- Court applied Colorado substantive law; New Mexico time bar

Cleanup contractors for the EPA may immediately appeal to the Tenth Circuit a ruling that allowed negligence claims by hundreds of members of the Navajo Nation to proceed over the massive 2015 Gold King mine spill that was allegedly triggered by the cleanup.

The U.S. Court of Appeals for the Tenth Circuit will consider whether the District of New Mexico erred in applying the substantive law of Colorado, whose statute of limitations would bar the suit, when the more generous statute of limitations of New Mexico would allow the claims to proceed.

The district court Sept. 25 granted the contractors' motion to certify the following question to the Tenth Circuit: If claims arising under one state's laws would be time-barred, may a district court, exercising diversity and supplemental jurisdiction, apply a different state's statute of limitations in order to allow the claims to proceed?

The plaintiffs allege the spill caused them to lose crops and livestock because they were prevented from using water from the Animas and San Juan Rivers. They also assert that they were unable to use the water for drinking, cooking, and bathing, and they had to purchase and haul water for replacement.

The trial court previously held that Colorado substantive law applies to the case.

But in a [May 2019 ruling](#), the court denied the contractors' motion to dismiss the case as untimely under Colorado's two-year time bar, instead applying the three-year statute of limitations of the forum state, New Mexico.

The case stems from an event on Aug. 5, 2015, when the EPA was conducting an investigation of the Gold King Mine near Silverton. While the contractors were engaged in excavation work, pressurized water leaked and spilled 3 million gallons of water into a tributary of the Animas River.

The water, carrying mining wastes, heavy metals, and toxic sediment, flowed through three states, and American Indian lands, before reaching the Colorado River at Lake Powell.

New Mexico, Utah, and the Navajo Nation are pursuing hazardous waste claims against EPA contractors and the federal government.

Judge William P. Johnson issued the ruling.

Egolf Ferlic Martinez & Harwood LLC represents the plaintiffs.

Crowley Fleck PLLP represents Sunnyside Gold Corp.

Holland & Hart LLP represents Kinross Gold U.S.A., Inc. and Kinross Gold Corp.

The case is In re Gold King Mine Release in San Juan Cty., D.N.M., No. 18-cv-00744, 9/25/19.

Opinion

Trump's E.P.A. Chooses Rodents Over People

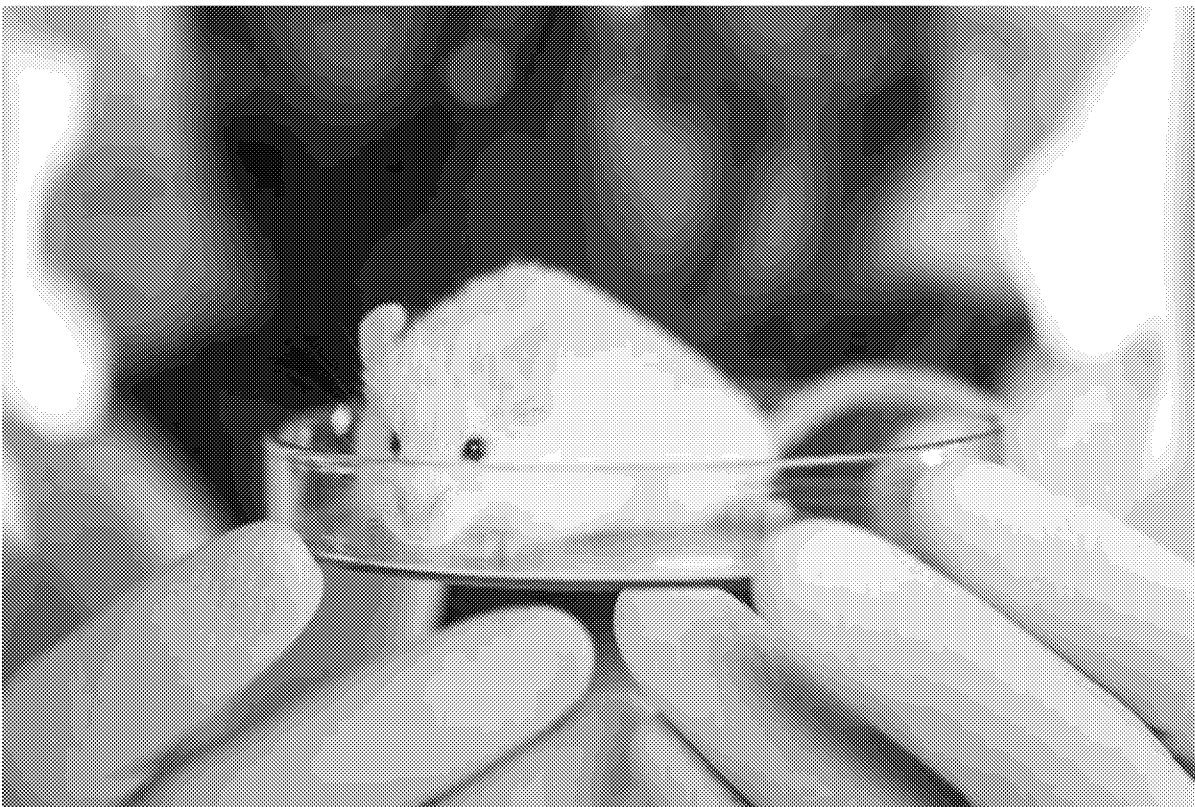
<https://www.nytimes.com/2019/09/26/opinion/epa-animal-testing.html>

The agency will curtail its reliance on animal testing, putting public health at risk.

By Richard L. Revesz

Mr. Revesz is a professor of law and dean emeritus at New York University School of Law.

- Sept. 26, 2019, 3:00 p.m. ET



Image

CreditCreditD-Keine/iStock, via Getty Images

Snowball, the pig in George Orwell's "Animal Farm," uses this catchy adage to summarize his view that people are enemies and animals are friends: "Four legs good, two legs bad." Bizarrely, the Trump

administration appears to have been persuaded, announcing a policy that will harm human health to protect animals used in laboratory experiments. The move will compromise an important source of evidence of the impacts of contaminants.

This month, Andrew Wheeler, the administrator of the Environmental Protection Agency, announced that the agency would significantly curtail its reliance on the use of mammals in toxicological studies conducted to determine whether environmental contaminants have an adverse impact on human health. Under this plan, the E.P.A. will reduce its requests for, and funding of, mammal studies by 30 percent by 2025 and eliminate them altogether by 2035, though some may still be approved on a case-by-case basis.

The new policy is likely to have adverse impacts on public health. Laboratory animal testing, particularly on rodents, has long been an important means for determining the toxicity of chemicals and other environmental contaminants. According to Mr. Wheeler, new methods are available to effectively provide information on chemical hazards without relying on animal testing. Experts don't seem to agree with him. As Tracey Woodruff, a professor at the University of California, San Francisco, School of Medicine, has said, only animal testing, and not the methods extolled by Mr. Wheeler, is currently robust enough to gauge the full range of the impacts of contaminants on human populations. Even Scott Gottlieb, the Food and Drug Administration commissioner, stated last year, "Without animal research, it would be impossible to gain some of the important knowledge needed to prevent human and animal suffering for many life-threatening diseases."

Mr. Wheeler asserted that the reason for this move was to protect animals used in laboratory experiments. Attempting to address skepticism about whether his motive was genuine, he stressed that this issue had been of "longstanding interest" to him, that when he was young his mother had told him about the "ethical problems" of animal testing and that one of his sisters was a zoologist and another was a veterinarian. Animal rights groups, including the Humane Society, praised the move.

But one does not need to scratch much below the surface to doubt that this policy was motivated primarily by concern for animal welfare. A move of this kind has been a priority of the chemical industry for several years. The American Chemistry Council, a trade association representing chemical manufacturers, has long supported a reduction in the government's reliance on animal testing for regulatory purposes. Since taking office, the Trump administration has worked behind the scenes to establish a coalition of chemical companies and animal rights groups to oppose animal testing.

Why would chemical companies make it a priority to protect the well-being of animals used for laboratory experiments when they consistently oppose regulatory efforts to protect the health of human populations? Well, because without mammal studies, the toxicity of chemical substances will be more difficult to prove.

The new policy announced by Mr. Wheeler, however bad it is considered in isolation, is much worse when evaluated in the context of other actions by the Trump administration. Last year, the E.P.A., then led by Scott Pruitt, proposed a Strengthening Transparency in Regulatory Science rule, which would make it very difficult, and in many cases downright impossible, for the E.P.A. to rely on epidemiological studies that explore the adverse impact of pollutants on human populations, because of the confidentiality agreements necessary to obtain personal health data. Just last week, Mr. Wheeler defended the proposed rule's rationale, though he indicated that it might be modified in some ways.

In another Orwellian twist, the agency claimed that this move was designed to improve the quality of the science on which it relies, yet major scientific organizations, including the American Lung Association, the American Heart Association and the American Medical Association, denounced the move. Though the E.P.A. asserted that the new policy would bring agency science in line with the publication policies of major scientific journals, the editors of those journals exposed the fallacy of the claim.

Toxicological studies on animals and epidemiological studies on humans are the two predominant sources of evidence on the adverse health effects of environmental contaminants. The Trump administration is working to undermine both, and if the agency gets its way, it will become more difficult, and in some cases impossible, to regulate harmful substances that cause tens of thousands of premature deaths each year. The Trump administration's actions since taking office make clear that this goal, rather than protecting rodents used in laboratory experiments, is what it is really after.